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REAL PROPERTY-VALIDITY OF REGULATIONS OR CONDITIONS IMPOSED UPON SUBDIVISION PLANNING

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REAL PROPERTY—VALIDITY OF REGULATIONS OR CONDITIONS IMPOSED UPON SUBDIVISION PLANNING—The plaintiff, wishing to subdivide its land fronting on Long Island Sound, submitted its plan to the town planning and zoning board whose approval was required by ordinance before land could be subdivided and sold. The board rejected plaintiff's plan as not in conformance with a preliminary town plan, adopted in 1936 pursuant to a state statute,[1] providing for the

[1] 22 Conn. Sp. Laws (1935) §1, 349, 350. This statute gave the town council of Stratford "the power to provide a master plan or plans for the entire town or for any part thereof, which plan or plans may provide for the future layout and location of all highways . . . and, if such plan or plans be adopted, may prescribe by ordinance, rules and

prospective construction of a road along the shore of the sound. The plaintiff appealed to the board of zoning appeals, which affirmed the decision of the town planning and zoning board. On appeal to the Supreme Court of Errors of Connecticut, *held,* reversed. A preliminary town plan, adopted without notice to affected property owners and without opportunity for them to be heard, cannot curtail the rights of such owners or limit them in the use of their land. *Lordship Park Assn. v. Board of Zoning Appeals of Town of Stratford,* (Conn. 1950) 75 A. (2d) 379.

With the continuous growth of metropolitan areas, the need for effective municipal planning has become increasingly evident. One means of combatting the haphazard development of communities is the use of planning boards empowered to impose reasonable and desirable conditions upon subdividers. An overwhelming majority of the courts recognize that use of land may be so conditioned.[2] Many are strict, however, in not allowing the imposition of conditions not specifically authorized by statute.[3] One recent case, on the other hand, has held that any reasonable condition not inconsistent with statutory authority may be imposed by the planning board.[4] In the principal case, statutory authority for the planning of future roadways in advance of land development is clearly present.[5] The court is of the opinion that the action of the town council in 1936 was not intended to be a formal adoption of the preliminary plan. If this is so, the decision is sound. The court, however, goes on to hold that enforcement of such a regulation would be a taking of property without due process of law, not merely a reasonable conditioning of the right to subdivide, on the ground that the plan could never be adopted under the police power without a prior hearing at which affected landowners are represented. Two of the three decisions cited by the court as authority for this position are not subdivision cases,[6] and no decision other than the principal case has been found which holds that imposition of a reasonable condition upon subdividers without such a hearing is unconstitutional.[7] Prior notice and an opportunity to be heard are not indispen-

regulations, determining the manner in which such plan or plans shall be made, filed, recorded, changed, altered or amended . . . and may by rule and regulation compel compliance with such plan or plans. . . ."

[2] 11 A.L.R. (2d) 524 at 532 (1950).

[3] Campau v. Board of Wayne County Auditors, 198 Mich. 468, 164 N.W. 369 (1917); Burroughs v. Cherokee, 134 Iowa 429, 109 N.W. 876 (1906); Hollis v. Parkland Corp., 120 Tex. 531, 40 S.W. (2d) 53 (1931); Carter v. Council Bluffs, 180 Iowa 227, 163 N.W. 195 (1917); But see Allen v. Stockwell, 210 Mich. 488, 178 N.W. 27 (1920).

[4] Ayres v. City Council of Los Angeles, 34 Cal. (2d) 31, 207 P. (2d) 1 (1949).

[5] Supra note 1.

[6] Hartford Trust Co. v. West Hartford, 84 Conn. 646, 650, 81 A. 244 (1911); Northrop v. Waterbury, 81 Conn. 305, 309, 70 A. 1024 (1908); Town of Windsor v. Whitney, 95 Conn. 357, 111 A. 354 (1920).

[7] A few state planning statutes require notice to landowners and a hearing at the time of enactment of conditions by the body to whom such authority is delegated, but none of the courts dealing with this type of statute consider the proposition that it would be unconstitutional without such a provision. Mansfield & Swett, Inc. v. West Orange, 120 N.J.L. 145, 198 A. 225 (1938); Town of Windsor v. Whitney, supra note 6. In Ayres v. City Council of Los Angeles, supra note 4, the state statute conferred upon each local governing

sable to a valid exercise of the police power, if one thereby affected can maintain his rights by any appropriate action.[8] The defendant in the principal case had such an opportunity upon presentation of its subdivision plan. At a later point in the decision the court states that such compliance cannot be accomplished under the police power, in any event, but only by use of the power of eminent domain. This proposition, that a requirement of compliance with certain subdivision regulations is an attempt to use the power of eminent domain, unconstitutionally disguised, has been consistently rejected by most courts on the grounds that such compliance is voluntary, since subdividing is not mandatory, and that such regulations are beneficial to those who will reside in a subdivision as well as to the entire community.[9] In the principal case, the preliminary plan is treated as merely a general goal toward which town planning should be aimed, not intended to be binding as to the future use of land, the court apparently being concerned with the fact that such an interpretation would render the plan completely ineffective. Surely it was not the purpose of the town plan or the statute under which it was adopted to provide a general guide which could be followed only by use of the power of eminent domain. Plans of this type are designed specifically to avoid such economic waste. Since the proposed road might be said to be of only incidental benefit to future residents of the subdivision, it is submitted that the court could also have reached the same result by basing its decision upon possible unreasonableness of the regulation, rather than upon the ground that such a regulation could never be imposed without a hearing and payment of compensation to the landowners.

Alan C. Boyd, S. Ed.

body power to prepare a master plan or part thereof and provided for a hearing at the time of preparation, but a subdivider was there held to be bound by conditions imposed without warning at the time of submission of his subdivision plan, though no master plan at all was in existence at that time.

[8] 12 AM. JUR., Constitutional Law §618, 310 (1938).

[9] 11 A.L.R. (2d) 534 at 537 (1950); Ayres v. City Council of Los Angeles, supra note 4; Newton v. American Secur. Co., 201 Ark. 943, 148 S.W. (2d) 311 (1941); Ridgefield Land Co. v. Detroit, 241 Mich. 468, 217 N.W. 58 (1928); Mansfield & Swett, Inc. v. West Orange, supra note 7; Town of Windsor v. Whitney, supra note 7.